

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.542 of 2015 and
M.P.No.1 of 2015

M/s Elite Engineering Pvt., Ltd.,
rep. By its Director Mrs.M.Fathima
having registered office at
Flat No.4, Plot No.108,
Anna Nagar, Chennai - 600 040

Administration office at
No.24, West Park Road,
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030

... Appellant/Appellant.

Vs.

1. M/s Elmarc Electrodes Pvt., Ltd.,
Formerly known as M/s Elmin Electrodes Pvt.Ltd.,
M/s Elmin Agencies Pvt., Ltd.,
registered office at
No.117, JVL Town, Nelson manickam Road,
Chennai - 600 029

2. Mrs.M.Fathima ... Respondents/Respondents.

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 15.09.2014 in A.S.No.163 of 2010 on the file of learned VII Additional District Judge, City Civil Court at Chennai confirming the Judgment and decree dated 16.04.2009 passed in O.S.No.6691 of 2004 on the file of learned XVII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.T.K.S.Gandhi

For R.1 : Mr.S.Thankasivan

JUDGEMENT

The 2nd defendant in O.S.No.6691 of 2004 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai is the appellant herein. The first respondent herein is the plaintiff

and the 2nd respondent is the 1st defendant in the suit. The said suit was filed by the first respondent/plaintiff for recovery of a sum of Rs.1,87,504/- with interest at the rate of 18% per annum from the date of filing of the suit till the date of realisation. By Decree and Judgment dated 16.04.2009, the trial Court dismissed the suit as against the 1st defendant but, decreed the same as against the 2nd defendant. Aggrieved over the same, the 2nd defendant filed an appeal in A.S.No.163 of 2010 on the file of the learned VII Additional Judge, City Civil Court, Chennai. By Decree and Judgment dated 15.09.2014, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court passed against the appellant herein. Challenging the same, the appellant/second defendant is before this Court with this Second Appeal.

2.This Second Appeal has come up today for admission. I have heard the learned counsel for the appellant and the learned counsel appearing for the first respondent who has entered appearance by way of caveator and also perused the records carefully.

3.The case of the first respondent/plaintiff is as follows:-

The 1st defendant is one Mrs.Fathima. Originally, the first defendant was running a business in the name and style of M/s Elite Engineers at Plot No.118 at SIDCO Industrial Estate, Chennai - 600 098, as a proprietary concern. Subsequently, the first defendant found that the company had incorporated the same under the name and style of M/s Elite Engineering Pvt., Ltd. The 1st defendant, entered an agreement with the plaintiff on 14.12.1988 to sell the rights and interest in respect of the said Plot No.118. This was duly informed to the Tamil Nadu Small Industries Development Corporation of India (SIDCO), who originally allotted the said Plot to the 1st defendant. Subsequently, on payment of the entire dues to the Government as well as sale consideration to the 1st defendant, the plaintiff got the sale deed executed in its name by means of registered document dated 27.03.1989 executed by SIDCO. Thus, from 27.03.1989 onwards, the said Plot has been owned by the plaintiff and he is running the business on the said property.

4. Later on, it came to light that the 1st defendant was running business all along from 1977, it fallen on huge arrears to the Commercial Tax Department towards Tamil Nadu General Sales Tax and Central Sales Tax. Notices were issued originally to the 1st defendant later on to the plaintiff calling upon them to clear off the said arrears of tax. The plaintiff filed a Writ Petition in W.P.No.14757 of 1994 on the file of this Court seeking to quash the said demand notice dated 12.08.1994 issued by the Sales Tax Authorities. The said Writ Petition was later on transferred to the file of Tamil Nadu Taxation Special

Tribunal and the same was dismissed. Thereafter, the plaintiff filed yet another Writ Petition in W.P.No.3722 of 2002 before this Court challenging the said order of the Tribunal. When the matter came up before a Division Bench of this Court, it has been held that the plaintiff would pay the sales tax directly to the authorities concerned however, with liberty to recover the same from the defendants herein and accordingly, the Writ Petition was dismissed by the Division Bench on 12.12.2002. Thereafter, the plaintiff paid the arrears to the tune of Rs.1,08,271/- to the sales tax authorities. When the plaintiff demanded the said amount from the defendants, they do not come forward to pay the same. Therefore, the plaintiff has filed the present suit to recover the a sum of Rs.1,08,271/- with the interest at the rate of 18% per annum.

5. The 1st defendant filed a written statement before the trial Court disowning any liability to pay the amount as demanded in the plaint. According to the 1st defendant, the 2nd defendant namely, M/s Elite Engineering Pvt., Ltd., was incorporated as a company by two individuals by name C.S.Mani and M.S.Sivendra Rao, but, while incorporating the company, the name of the 1st defendant was also shown as one of the Directors. However, the 1st defendant was not involved in the day-to-day affairs of the company and hence, she has nothing to do with the affairs of the company. Even thereafter, in the month of December 1977, the above said two Directors had received a letter of resignation from the 1st defendant and they assured Mrs.Fathima to get the same registered with the Registrar of Companies. Thus, according to the 1st defendant, in the business conducted by the 2nd defendant company namely, M/s.Elite Engineering Pvt., Ltd and the tax dues by the said company to the Commercial Tax Department and to the Central Excise Department, the 1st defendant is not liable at all. Thus, according to the 1st defendant she is not liable to pay any amount to the plaintiff.

6.The 2nd defendant is admittedly the company known as M/s Elite Engineering Pvt., Ltd. In the plaint, the 2nd defendant, was shown and the 2nd defendant was being represented by the 1st defendant, Mrs.Fathima as in the capacity of one of the Director of the said company. She fairly admitted that the sales tax arrears was due only from the 2nd defendant company, namely, Elite Engineering Pvt., Ltd., and not from her. Since, the amount was paid by the plaintiff, the plaintiff could recover the same only from M/s.Elite Engineering Pvt., Ltd., namely the 2nd defendant. First defendant would further contend that since, she had nothing to do with the 2nd defendant company, the array of herself as a party to the suit as though she is representing the 2nd defendant company is not correct and therefore, the suit is liable to be dismissed.

7.Yet another plea taken by the 1st defendant was that the other two Directors of the Company, namely, C.S.Mani and M.S.Sivendra Rao, who were responsible for the day-to-day affairs of the company ought to have been made as parties to the suit and since, they were not made as parties, the suit is liable to be dismissed for non-joinder of necessary parties.

8.Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, one Mr.K.Subbaiah was examined as P.W.1 and 18 documents were exhibited. On the side of the defendants one Mr.Mohideen was examined as D.W.1 and one document namely, the Power of Attorney executed by Mr.Mohideen was marked and no other document was marked on the side of the defendants.

9.Having considered all the above, the trial Court dismissed the suit as against the 1st defendant, namely Mrs.Fathima and decreed the suit as against the 2nd defendant, namely, M/s M/s Elite Engineering Pvt., Ltd. The First Appeal filed by the 2nd defendant was dismissed by the First Appellate Court and therefore, the 2nd defendant is before this Court with this Second Appeal.

10.In this second appeal, the learned counsel for the appellant would submit that the tax arrears due to the Commercial Taxes towards the Tamil Nadu General Sales Tax (TNGST) and the Central Sales Tax (CST) was only from the 2nd defendant company M/s Elite Engineering Pvt., Ltd., having paid the said amount on behalf of the 2nd defendant, according to him, the plaintiff can utmost recover the said amount from M/s Elite Engineering Pvt., Ltd., The learned counsel would submit that Mrs.Fathima has got nothing to do with the company but, still the trial Court as well as the First Appellate Court have decreed the suit against the 2nd defendant being represented by Mrs.Fathima. Therefore, according to the learned counsel, the decree and judgment of the trial Court confirmed by the First Appellate Court is liable to be set aside.

11.The learned counsel for the 1st respondent/caveator would vehemently oppose this second appeal. According to the written statement filed by Mrs.Fathima, the 1st defendant before the trial Court, she has admitted that she is also one of the Director of the 2nd defendant company, Apart from that, Exhibit P.5 would go to show that Mrs.Fathima is one of the Directors of the 2nd defendant company.

12.The learned counsel for the 1st respondent would further submit that as per Order 29 Rule 2 of the Code of Civil Procedure, the suit should be filed against the company being represented by one of the Director and there is no need to implead all the Directors of the company. He would further

submit that the First Appeal was filed only by Mrs.Fathima on behalf of the 2nd defendant company and when the appeal is also filed by the Company being represented by Mrs.Fathima, according to the learned counsel it is not correct to now say that Mrs.Fathima has nothing to do with the day-to-day affairs of the 2nd defendant company.

13. I have considered the above submissions.

14. At the outset, I should say that there is no substantial question of law at all involved warranting even admission of this second appeal. In the written statement filed by Mrs.Fathima before the trial Court, there is a clear admission that tax arrears was due only from the 2nd defendant company, namely, M/s Elite Engineering Pvt., Limited. It is also not in dispute that when the 2nd defendant company was incorporated, Mrs.Fathima was one of the Directors. As per Order 29 Rule 2 of the Code of Civil Procedure, the Company can be sued by being represented by any one of the Directors and there is no need to implead all the Directors to represent the Company in the suit. In the instant case, though, it is stated by Mrs.Fathima that her letter of resignation was received by the other directors in the year 1977 itself and she had nothing to do with the second defendant company, the same cannot be accepted for various reasons.

15. First of all, there is no documentary proof to show that she resigned from the post of Director of the 2nd defendant company. She has not gone to the Box to depose before the Court as to when and how, she resigned the post of Director of the company. One Mr.Mohideen has been examined as D.W.1, who in my considered opinion is not a competent person to speak about the resignation of Mrs.Fathima from the Directorship of the Company. Further, if it is true that Mrs.Fathima had resigned from the Directorship of the company, the same should have been registered with the Registrar of companies. But, no such document has been produced. To the contrary, Ex.A.5, namely, Registration certificate of the company shows that Mrs.Fathima was one of the Directors of the Company. Apart from the same, the First Appeal was filed by the 2nd defendant company being represented by Mrs.Fathima. Having filed by the First Appeal by the 2nd defendant company being represented by Mrs.Fathima it is not now open for them to claim that she is not a director of the company. The Vakalat filed before this Court in this second appeal by the Appellant would also go to show that the same has been filed not by Mrs.Fathima in her individual capacity. In the Vakalat, Mrs.Fathima herself has signed as the Director of the appellant company. Having done all these things, I do not understand as to how she can now claim that she has nothing to do with the 2nd defendant company. The Courts below have rightly dismissed the suit as against Mrs.Fathima and decreed the suit

in favour of the Appellant because, there is no dispute that the company is liable to pay the amount claimed in the suit.

16.In the result, the Second Appeal fails and accordingly, the same is dismissed and the decree and judgment of the First Appellate Court is hereby confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

ssd

s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The VII Additional Judge, City Civil Court at Chennai
2. The XVII Assistant Judge, City Civil Court, Chennai.

+ 1 cc to Mr.T.K.Gandhi, Advocate SR 308

+ 1 cc to Mr.S.Thankasivan, Advocate SR 174

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aa28/1

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